

**LEGAL ASSISTANCE AVAILABLE TO THE PUBLIC, INCLUDING  
PRIVATE PRACTITIONERS**

**Statement of**

**Edward N. Gadsby  
Chairman  
Securities and Exchange Commission  
Washington, D. C.**

**Before the**

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Since its inception the Securities and Exchange Commission has placed great emphasis upon acquainting persons subject to its jurisdiction with the manner and means of complying with the statutes it administers, and this program has paid off great dividends over the years. Generally speaking, most persons are interested in complying with the law rather than in attempting to violate or evade it. With this in mind, the Commission freely offers interpretative advice to the public and to private practitioners in particular for the purpose of facilitating the lawyer's practice before the agency. We recognize that the statutes which we administer deal with relatively complex matters and problems. While we attempt by our formal rules and regulations to provide a guide to the lawyer, interpretative problems necessarily arise whenever you are dealing with words. Even persons specialized in the securities field find it necessary from time to time to consult with our staff for the purpose of solving new problems. We encourage any inquiries of this nature, since we feel that they serve to prevent violations of the law and so simplify our own work, as well as helping the public.

The procedures for obtaining advice are very informal. As I am sure most of you know, inquiries may be made by telephone, mail or personal visit. With respect to most problems, interpretative advice can be obtained in the Commission's several Regional and Branch Offices throughout the country. If a problem is presented which the Regional Office cannot handle, it will obtain the necessary advice from the Headquarters Office for the inquirer. Direct inquiry may also be made to the Home Office, where each division of the Commission has staff attorneys who render advice concerning the statutes administered by it.

I am sure all of you are aware that the Commission is responsible for the administration and enforcement of six basic statutes, namely, the Securities Act of 1933; the Securities Exchange Act of 1934; the Public Utility Holding Company Act of 1935; the Trust Indenture Act of 1939; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. It also has certain advisory functions under Chapter X of the Bankruptcy Law, the so-called Chandler Act. If you have a problem falling under one or more of these statutes, you may obtain an opinion with respect to any

particular problems involved by presenting an adequate statement of the facts of the matter to the Commission's staff. Our only requirement is that we insist upon receiving all of the facts, including the name of the corporation or individual involved. This is so because we cannot give interpretative advice on hypothetical situations. In order that we may properly rule on such matters, we ask that, wherever possible, the matter be submitted by letter. Depending upon the complexity of the problem presented, it may be desirable to arrange an appointment with a member of our staff to discuss your problem informally prior to submitting the full statement of facts for determination.

While we insist on full disclosure of all the facts to protect persons and lawyers who seek such advice, our policy is to treat such inquiries and our responses as confidential, and we have in the past successfully resisted attempts to subpoena such material. 1/ Whenever the Commission believes it is desirable to publish certain interpretations because of their general importance to the industry and the bar, we are careful to delete the names and other identifying information prior to publication. In this connection I wish to emphasize that the Commission's quasi-judicial opinions, as distinguished from these administrative interpretations, are matters of public record and are always published so that they will be available to the public and practitioners.

While interpretations rendered by our staff are not to be deemed opinions of the Commission, they do represent the considered judgment of responsible staff members familiar with the various statutes and rules involved. Such opinions, of course, are not binding upon the courts, nor for that matter are the opinions issued by the Commission. However, an administrative agency's consistent construction of the statutes administered by it is given great weight by the courts and even greater weight with respect to its own rules when court litigation does ensue. We at the Commission are very proud of this interpretative service which, in 1955, the Hoover Commission characterized as "an excellent practice . . . most effectively used."

Many of the proceedings which come before the Commission are initiated by the filing of certain forms, such as registration statements and prospectuses, Regulation A notifications and offering circulars, and

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1/ Pergamente v. Frazer (S.D. N.Y., 1950, Civil Action No. M8-85).

broker-dealer applications. There are special forms designed to fit special situations and forms which persons coming under our jurisdiction are required to file with us. While, of course, the staff carefully avoids any appearance of drafting these papers on behalf of the inquirer, it is always available, first to discuss with anyone the proper form which should be used in a given situation, and second to discuss the extent of the material required to be included in the form. Especially helpful are pre-filing conferences in connection with registration of securities under the 1933 Act. Such conferences very often serve to avoid problems which, if not cleared up in advance, might delay the effective date of the registration statement.

I should also mention the so-called "no action" letter which is sometimes rendered by the staff in lieu of a requested interpretation. While this letter has no binding effect and is of limited legal significance, we have found that the bar regards it as an important and useful device. In substance, the "no action" letter is a statement by the staff that, on the facts as presented to them, they will not recommend action to the Commission if the attorney proceeds on his construction that the statutes do not prohibit his planned course of action. Such a letter will generally be issued where the questions of fact or law are exceedingly close and the staff does not wish to express a definitive opinion.

On occasion the public or private practitioners may wish to complain to the Commission concerning actions or transactions which they believe to be in violation of the statutes or rules administered by the Commission. We, of course, welcome any complaints although the Commission, like other Federal administrative agencies, is entrusted with full discretion in determining what action, if any, should be taken with respect to them. The Commission may decline to take any action because it believes no violation has occurred or that action is not warranted in the particular circumstances for other administrative reasons. Failure of the Commission to act, however, does not prohibit the complainant himself from instituting a private lawsuit if he so desires. Incidentally, the courts have held that the Commission's exercise of its discretion in this regard is not reviewable. <sup>2/</sup> It could not be otherwise for the courts are not in a position to weigh the various discretionary factors which must be considered in determining whether the facts in a particular situation warrant bringing into play the full force of the Federal Government through the administrative agency involved.

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<sup>2/</sup> Leighton v. S.E.C., 221 F. 2d 91 (D.C. Cir., 1955), cert. den. 350 U. S. 825 (1955).

Finally, I want to say just a few words about amicus curiae participation by the Commission. Frequently, issues involved in private lawsuits are important because of their impact upon the Commission's own administration of the statutes involved. Accordingly, where appropriate, the Commission will file amicus curiae memoranda or briefs and on occasion participate in oral arguments. The purpose of such participation is not to aid a particular party but rather solely to assist the courts to arrive at what the Commission deems to be a proper construction of the statute. Private practitioners frequently request the Commission to participate in actions in which they are involved. The answer of the Commission in any situation, however, will not depend upon the request of the party, but rather upon whether we believe that the question presented as to the construction of the statute is sufficiently important to warrant our participation. We welcome being informed of pending litigation involving statutes we administer so that we may be aware of cases in which we may desire to participate as amicus. As a matter of general policy where we do participate, we avoid becoming involved in any factual disputes or any legal questions not pertaining to or affecting the administration of the statutes. However, if a court requests us to assist as amicus, we may brief questions not directly involved in our administration of the securities laws, such as questions relating to the private civil recovery provisions of the Federal securities laws.

In conclusion, I wish to assure you that the Commission is most anxious to render whatever assistance it possibly can to all private practitioners who desire assistance on problems within its jurisdiction. The only consideration we expect is honest, candid and sincere requests intended to achieve compliance with the law.